1103

SUPREME COURT OF THE UNITED STATES.

No. 208.

THE UNITED STATES, APP'TS,

vs.

BERNARDO YORBA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"La Sierra."

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BERNARDO YORBA, claimant, *vs.* THE UNITED STATES, defendant. } For the place named "La Sierra."

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this ninth day of October, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Bernardo Yorba, for the place named La Sierra, was presented, and ordered to be filed and docketed with No. 382, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following proceedings were had, in their chronological order, to wit:

LOS ANGELES, *Oct.* 15, 1852.

In case No. 382, Bernardo Yorba, for the place named "La Sierra," the deposition of Ygnacio F. Coronel, taken before Commissioner Hiland Hall, with document marked A. H, H., and translation thereof, marked A, annexed thereto was filed.

(*Vide* page 4 of this transcript.)

LOS ANGELES, *Oct.* 19, 1852.

In the same case, the deposition of Abel Stearns, a witness on behalf of the claimant, taken before Commissioner Hiland
4 Hall, was filed.

(*Vide* page 5 of this transcript.)

LOS ANGELES, *Oct.* 20, 1852.

In the same case the deposition of José Antonio Carillo, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 7 of this transcript.)

LOS ANGELES, *Oct.* 22, 1852.

In the same case, the deposition of Benj. D. Wilson, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 8 of this transcript.)

LOS ANGELES, *Oct.* 25, 1852.

In the same case, the deposition of Leonardo Cota, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 9 of this transcript.)

SAN FRANCISCO, *Sept.* 26, 1853.

Case No. 382 called. Submitted on brief on both sides, and taken under advisement by the board.

SAN FRANCISCO, *Feb.* 14, 1854.

In the same case, Commissioner Thompson Campbell delivered the opinion of the majority of the board, rejecting the claim.

(*Vide* page 41 of this transcript.)

5 In the same case, Commissioner R. Aug. Thompson delivered his dissenting opinion.

(*Vide* page 44 of this transcript.)

6 *Petition.*

To the Hon. commissioners for ascertaining and settling private land claims in California:

Bernardo Yorba represents that for more than twenty years prior to the 15th of June, 1846, he and those under whom he claimed, with the permission and sanction of the authorities of the country, occupied and possessed, as owner, a tract of four leagues, more or less, of land, called "La Sierra," bounded by the river Santa Clara and the Rancho de Temarcal, and within the limits of the present county of Los Angeles.

That on the 15th of June, 1846, a formal grant of said land was made by Pio Pico, then governor of California, under authority of the laws then in force, and juridical possession of the land was given on the 19th of July, 1846, all of which will appear by reference to Exhibit A, herewith filed, with a translation, marked D, containing the said original title and act of possession, upon which, and such other evidence as he may hereafter present, he relies to support his claim.

He knows of no other claim to any part of the land.

He prays that his title be confirmed.

A. P. CRITTENDEN,
Att'y for Claimant.

Filed in office October 9th, 1852.

GEO. FISHER, *Sec'y.*

7 *Deposition of Ygnacio F. Coronel.*

LOS ANGELES, *Oct.* 15*th*, 1852.

On this 15th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims

in California, personally appeared Ygnacio Coronel, a witness produced on the part of Bernardo Yorba, claimant of La Sierra, which claim is No. 382 on the docket of said commissioners, who, being duly sworn, testified as follows:

The associate law agent of the United States was notified, and attended.

Examined by claimant:

Question first. What is your name, age, and where do you reside? If in California, how long have you resided here?

Answer. My name is Ygnacio F. Coronel; I am fifty-eight years of age; I live in Los Angelos, and have reided in California about nineteen years.

Question second. Are you acquainted with the signatures of Pio Pico, José Matias Moreno, and Leonardo Cota?

Answer. I am.

Question third. Examine the document on file in this case, marked Exhibit A, and say whether or not the signatures of these persons are genuine?

Answer. I have examined said document. The signatures of Pio Pico and José Matias Moreno to the grant, of Moreno to the certificate which follows it, and of Leonardo Cota to the act of possession, are genuine. The last paper—the copy of the juridicial possession—was signed by Leonardo Cota in my presence, and I signed it also as a witness.

8 Question fourth. Who was governor of California during the month of June. 1846, and who was sec'y?

Answer. Dn. Pio Pico was governor, and José Ma. Covarrubias secretary. In the absence of Covarrubias, José Matias Moreno acted as ecretary.

Question fifth. Do you know where the rancho called La Sierra is? If yes, state what you know in regard to its occupation by any one? When was it first occupied within your knowledge, by whom, in what manner? How long did that occupation continue?

Answer. I know the Rancho La Sierra. I first came to California in 1834, and first saw the rancho in 1837. It was then occupied by Thomas and Bernardo Yorba, who had houses on it occupied by their servants, and had cattle there, and they occupied it together until the death of Thomas in 1845, and on his death the land was divided between his heirs and Bernardo. The land granted to Bernardo has been occupied by him ever since the grant. The land was divided, on the application to the governor by the heirs of Thomas and by Bernardo, by his granting seperate portions of the land to each, since which they have occupied the seperate portions according to their grants.

YGN'O F. CORONEL.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Oct. 15th, 1852.

GEO. FISHER, *Secretary.*

Depo. of Abel Stearns.

9 OFFICE OF THE U. S. LAND COMMISSION, LOS ANGELES.

On the 19th day of October, 1852, before me, Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, personally appeared Abel Stearns, a witness produced in behalf of Bernardo Yorba, claimant of La Sierra, in the case which is No. 382 on the docket of said commissioners, who, having been duly sworn, testified as follows:

The associate law agent was present.

Question first. What is your name, age, where do you reside? If in California, how long have you resided here?

Answer. My name is Abel Stearns; my age, fifty-four years; and I reside in Los Angeles. I have resided in California for the last twenty-three years.

In answer to questions by the counsel for the claimant the witness further testified as follows:

I am acquainted with the rancho called Sierra; it is situated on the southeast side of the river Santa Ana, in the county of Los Angeles; I have known the place from the year 1834 or 1835. It was occupied from that time, and I believe previously, by Tomas and Bernardo Yorba, with cattle and other stock. Their residence was not on the land; it was grazing land, and for the keeping of stock. The occupation has been continued in the family to the present
10 time. The Rancho Sierra, of which I am speaking, embraces a larger tract, of which I understand Bernardo Yorba occupies and claims but a part. I have always understood that the rancho had been occupied by the father of Tomas and Bernardo Yorba, before I knew it, and that it had been long in the possession of the family. There is a small house on the lower part of the rancho, which must have been built as early as 1844, or earlier, as I think.

ABEL STEARNS.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Oct. 19th, 1852.

GEO. FISHER, *Sec'y.*

Depo. of José Antonio Carrillo.

11 OFFICE OF THE U. S. LAND COMMISSION,
Los Angeles, Oct. 20th, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came José Antonio Carrillo, a witness produced in behalf of the claimant, Bernardo Yorba, whose petition is No. 382 on the docket of the commissioners, and was duly sworn; his evidence, being given in Spanish, was interpreted by the secretary.

The U. S. law agent was notified, and attended.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is José Antonio Carrillo; my age, fifty-seven years; and I reside in Los Angeles, and am a native of California.

I am acquainted with the Rancho La Sierra; it is situated on the river Santa Ana, in the county of Los Angeles. Bernardo Yorba has occupied it ever since the year 1833. It had been previously occupied by Antonio Yorba, the father of Bernardo, from the year 1810, in company with the Peraltas.

In answer to questions by the associate law agent witness says that the Peraltas did claim a portion of the land, but that Yorba and they had a settlement of the matter and divided the land be-
12 tween them, leaving the lines now claimed by Bernardo as belonging entirely to him. The witness knows of no adverse claim to the land.

JOSÉ ANTONIO CARRILLO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 20th, 1852.

GEO. FISHER, *Sec'y.*

Depo. of B. D. Wilson.

13 OFFICE OF THE U. S. LAND COMMISSIONERS,
Los Angeles, October 22d, 1852.

On this day, before Hiland Hall, one of the commissioners for ascertaining and settling private land claims in California, came B. D. Wilson, a witness in behalf of the claimant, B. Yorba, whose petition is No. 382 on the docket of the board, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was notified, and attended.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Benjamin D. Wilson; my age is forty years; I reside in the city of Los Angeles, and have lived in California ever since the year 1841.

I know the rancho called La Sierra; it is situated in this county, some forty miles from this place, in a southeasterly direction, on the river Santa Ana. I think I first saw the rancho in 1843; at that time it was occupied by Bernardo Yorba and Thomas Yorba. It was occupied by them together until the death of Thomas Yorba, in 1844 or 1845. In 1846 the widow and heirs of Thomas Yorba agreed with Bernardo Yorba on a division of the land between them, and each party then petitioned the governor for grants, and he sanctioned the division by granting to each of the two parties the distinct portions of the land they respectively petitioned for. The lower por-

14 tion of the said rancho contained the house and lands which Bernardo took in the division, and that portion retained the name of La Sierra; since the division the widow has built a house and land on her part, and Bernardo has occupied his part seperately for her. The old house, on the lower part of the rancho, was there when I first knew the land. It was inhabited, and has been ever since.

The name of the widow of Thomas Yorba was Vicenta Sepulveda.

B. D. WILSON.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 22d, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Leonardo Cota.

15 LOS ANGELES, *October 25th*, 1852.

On this day, before Hiland Hall, came Leonardo Cota, a witness in behalf of the claimant Bernardo, petition No. 382, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Leonardo Cota; my age is thirty-four years; and I reside in Los Angeles, and am a native of California.

A paper is now shown me, purporting to be proceedings of juridical possession given to Bernardo Yorba, of a place called La Sierra, 18th of July, 1846. My genuine signature is attached to said paper. I was acting as alcalde at the time, and gave the judicial possession, as stated in said paper. There were two alcaldes; and when there was a temporary vacancy the regidor he filled the vacancy for the time being, being authorized by law to do.

In this case the first alcalde was abroad, and the second a relative of the party, and by law incompetent. I was therefore appointed. Said paper is marked Exhibit A, and annexed to the deposition of Ignacio F. Coronel.

LEONARDO COTA.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office October 25th, 1852.

GEO. FISHER, *Secretary.*

16 (Here follows map, marked original, page 17.)

18 1845.

Espediente promovido por Don Bernardo Yorba enputencion del terreno llamado la sierra. No. 543.

ANGELES,
Octubre 23 de 1845.

Pare lete instancia al July 1° de esta capital paraque proctique los informes que sean necesarios y vintoo al Gobrimo paia resolucion.

PICO.

Ex'mo S'or Gobernador: Bernardo Yorba dueño del rancho Sn. Automo en el rio de Santa Ana y de la recindad de esta cuidad ante V. E. couel debido respecto y legun derecho me presento y digo, que habinedo poseido hace mas de venite años un parage llamado de la sierra sobre el mismo rio altro, fue ocupado chelamente con las bienes delfruado me hermano D'n Tomas Yorba, en los higos en cuya unicon mas mantis-vimos en buena armonia, mas hoy comalos bienes del altro fruado pasan á otres manos me es conviminte pedir la division del terreno que en el espresado parage de la sierra y ponlotanto nohabiendo obtenido titulo en forma segun han prevenido leyes portenores aquel entonees elevo lopresente esperando que V. E. se sirva letendro me el correspondiente al diceño que tenge el honor de acompañar cuya estencion es comode cuatro leguas por lo que, A. V. E., pido suplico me conceda esta solicitud por ser de necesidad y justicia; cuya gracia imploro protestando lo necesario y esperando se sirva, V. E., admitér la presente en este papel comun por falta del sellado correspondiente.

Angeles, Octubre 18 de 1845.

BERNARDO YORBA.

19 ANGELES, *Obre* 24 *de* 1845.

En cumplimiento del superior decreto marginal al Ex'mo S'or Gobernador que obra en la antecedente instancia, pasese por mas declaracion a examinar el terreno que solicita al interesado, previa citacion de colindantes y demas diligencias respectivos asi yo vicente Sanchez, alcalde primero constitucional las dereti mandi y firme con los de mi asistencia segundio.

A. F. CORONEL.

VICTOR SANCHEZ, *Assa.*
FELIPE CARRILDO, *Assa.*

ANG'S 29 *de Octubre de* 1845.

En la fha. se nombro a las senores regidor Don Luis Jordan y sindico procurador D. Bacilio Valdez, para que hagan la veduria del terreno que hace mencion el solicitante; previas los requisitos de estelo y conforme al deseño. Lo que haciento por diligencia que antoneo y firme con los de assa, segundio.

JOSE MARIA MORCUO.

V'T'R SANCHEZ, *Assa.*
A. F. CORONEL, *Assa.*

ANGELES, *Obre* 30 *de* 1845.

Se entrega el yresente espediente a la comicion nombrada con tres fojas utiles.

SANCHEZ.
SOR. JUEZ. 1o.

{ Comiscion de } { Ayuntamto. }

Concermente al oficio de V. fecha 29, del po. pdo. en ql. in dere. pare hacer la vedurin del terreno que solicito (titulo) Dr. Fernando Yorba, convincio a V. que hemos estado. Yo el Sor. Dn. Bacileo Valdez haser la referida examinacion y veduria, del sitio para la cual q. podulo verificar mandamos citar á los calindantes q. V. mi dizo henar a pesar de no ser lo mas que la Sna. Dn. Vicenta Sepulveda per-
20 varer sin embargo delso, para cumplir los maudé citar, y no comparecio niugemo, y biendo llo-elloy que el maro que fire con las citas dize que no estabaro hoy ningemo mas que la Sña. Vicenta y estando mande decir que en apoderado uo estaba hay y que no tenia à quim mandarlos fuimos hacer la bedurin y examinar el terreno el cual dizo a V. que es conforme al deseño que se presente que no es de particular nengimo, ni comunidad.

Leso que es uncainente unterreno, que hace mas de veinte anos que los poseé de Sor Dn. Bernardo y. D. Tamas Yorba (finado) mas el que solicitá dho Sor Don Bernando no estesto el terreno. Surrá es mas que una parte del pocó mas ó menos.

Es cuanto tenemos que poneula conversento de v. paen los fines que le com leuzan esta vez propocionara la ocasion de ofrecer los segusidades de nuestras ápreciar.

Diex y Libertad.

SAN ANTONIO, *Obre* 1o *de* 1845.

LUIS JORDAN BAEILIO VALOLEZ.

ANGELES, *Oct.* 27, *de* 1845. Pare la presente salicitad al Juez, 1o de cita capital y que y hoy que este al espediente de Don Bernando Yuba para que conteste al contemdo de el la y vol ben al Gabn. para resolver.

PICO.

Viceunta Sepulueda Vinda del feuádo D. Tomas Yorba y Mexicano por naciento ante v. z por el ocuesa legal y en la mas bastante forma compareseo y digo; que tengo noticiá que mi her mano politico D. Bernando Yorba, pidio por una instancia dirijiada a esa superioridad la division formal de los ranchos de Santa Ana q. Ann pide que se le agraein, conunterreno anexo al rancho de Santa
21 Ana cunmedeo: esta nateun y es de sututora de las menores hijos mios y del finado Don Tomas Yorba me exigen duigenne a v. e. y manifestar le que al dividir este terreno bajo al pio que hoy sehalla seran nada menos que examinar á mi familia ponge el sitér que paseo la el mas pequeno de los Santa Ana, luraron de que quanda se trata de la division del precetudo terreno por mi esporo eran posudor, los Yorba's del paraje mombrado de las mun y cosme el Sór Alvarado se lo concedio al Sór Don José Sapulueda, que de memos enbadod rancho que urumsesteó una cortedad absoluta y nada benificio á la

familia mia mas que no resultem ni la familia D Bernando Yorba por que tune el Cajon de Santa Ana ni la de Don José A. Yorba por el doncho que dejo fundado en las balsas como repacionara de Dn. Catarina Duiz peio Sr. V. E. como le necesario la subordinacion de estos sitios que se haga con arreglo á deucho disputando todo con ignales benficios en los terrenos pastos abrevaden y Aguaje y de ninguna mauera se pudun permetár que una persona se bénficio y las demas se daum. Por tanto A V. E. suplieo que en vesta de la espunto maudé se agreque esta instancin a la que presente D. Bernardo Yorba y pido setenga presente al trempo de resolver al negocio justecia que de V. E. espeso en lo que recibire gracia. Imo no ser de malicia y lo necesario D. Sabiendore admtir la presente en papal comun por falta de Sellado respective.

ANGELES, *Octobre* 24 *de* 1845. Non firmar.

22 ANGELES, *Octobre de* 1845.

En complimiento del superior decreto marginal hazure saber la antecedente solicitud al Sor. Bernardo Yorba por que conste al contiendo de ella, y Azreguese al Espediente de Sor comalo dispone el Exmo. Sor Ase Yo Vicente Sanchez Alcalde 1o. instana. decreté mandi y firmé con los mis assa, segun derecho.

JOSÉ MARTENO MORENO.

VICENTI SANCHEZ, *Assa.*
A. F. CORONEL, *Assa.*

ANGELES, *O'bre de* 1845.

En la fha se presonto Don Bernardo Yorba y se de notifico lo antecedente lo impuesto digo se lo entregara el espediente por sinco dias para que contesto á la instancia de Dona Vicenta Sepulveda, esto contesto y firmé conmizo y los de assa segun derecho.

VT'E SANCHEZ.
BERNARDO YERBA, *Assa.*

A. P. CORONEL, *Assa.*
LUIS JORDAN.

En la fha. se le entiegó el espediente al Sor Don Bernardo Yorba por disco dias en sus fogas utiles.

Sor Juez de primera instancia de la luidad y su demarcacion :

Bernardo Yorba ante al tribunal de V. E. en toda forma y segun derecho me corresponde diego; que habiendome echo cargo de la representacion que hizo gobierno Dn. Vicenta Sepulceda venda de mi fruado Hermano Tomas, y del decreto que acompaña a continuacion de verra v. cepedio por el que pasa por el termeno de cineo dias a me poder para contestar, lo hazo con la debido respecto y espougo; que parese que decho Sor. el quiroze su consepto, pues mi
23 primera peticion quedere almiemo gobno. no hablare particion de terrenos si no solicitud del titulo por que no lo hay en formado una parte del paragne mis espresardo hermano y yo ocupamos por espacio de venite anos en la Sierra y esta en nado tieno concesion con el roncho decta. ana que a todos los hermanos nos corres-

ponde por herencia si a la respectida Sra. Dna. Vicente no le convine suplicar por las leyes no les cutad de los terrenos que ocupa, ami si y pr. esta razon enesta no implora al superior gobierno nu de el titulo correspondiente segun el deseño que corre en el espediente. No esto no les resulto daño miguero a los herederos a Sta. Ana, ni à lo repitida Señora puerto que lo que pretende es obtener el documento q. haga legal la posecion por eesefirlo asi la ley, y, no puedo menos de conferas que si hasta ahora, la confraizn reposeaba en mi desaida, q. de so advertir lo y no esponer mi ocupacion de tantos años, a las vicisitudes de los tiempos venideros.

Ahora con respecto al parage decta aña y que la dha senora prorere asumto sobre el diego, qae pido ia division como parte mi herencia y a por que es muy necesario con mis intereses y ya pr. que coma losa heredada dehe reconocer como lezitima á mis subsesores tal como es por lo que conviene dha. particion; la Sra. Dona. Vicente Sepulveda alz'r de perjucio se sehace. Yr. ignoro las razones por que se perjudica pues veo lo contrario y conoco que resulta para todas el beneficio de saber lo que a cada uno esclusivamente pertenerca,

24 mas suposiendo sin eonseater que ella se perjudicaire ó caso y derebuva sujetar á sufrir uno mal, por la presensions de que a ella le produsca a bien? No señor ni la sñ. ni yo y azregueso que ni los demas herederos nos gravamen en nada, y tan lejos estoy de crurdo, como conciento de ser util el verificarlo. Por lo dicho espero de V. sc serva mando haser la particion del rancho de Sta. Ana por su conforme á derecho y a la autoridad de la ley, como parde vee se si si se comuerten con las sabios publenetos que todos en ello convienen, no obstante esto, sui este recurso, bastar o las da luz de la razon para convenur y renidos los hombres en sociedad, esta garantiza lo Intereses particulares de cador sitio y no se conseguira sufen, si cualguira quesde se impedir el libre un, aprovachean'te y conosimiente de los que posee de Sta. Ana pertenece ó varios y ana como de ellos, mas como hasta ahora no estar devermusada la parte vuelva á repitir que no conviene la particion alozando en mi fabor el derecho que lo ley que lo dispone por lo que cumpliendo con lo dispuento pr. el tribunal del. en su decreto a fojas 6. A. V. E. Rido y suplico hazo como lleno dicho por sur de justicia, juro lo necesario y que espero me permitera V. el uso del papel comun pr. falta del sellardo que corresponde.

S. Antonio, y Enero 3 de 1846.

BERNARDO YORBA.

Exmo. Sor: Tengo el favor deponer en Manos de V. E. en ocho fojas el espediente promovido por el Sor Don Bernardo Yorba, el cual yeba el informe de la concesion que hizo la veclusia del terreno demuciado; pero la falta la precisa comparacisra de las colin-

25 dantes y demas interesados para que segun algatos y escepciones la superioredad formar ser y meno inacto; mas como el tiempo corra y la parte del de D'n Bernardo Azita es preciso à elevar la à V. E. pasa que resolva lo que creajusto.

Ang's, En'o 5 de 1845.

JUAN GALARDA.

Angeles, Febrero 22 de 1846.—Vuelva esto espediente al acalde 1° de este capital, para que convesta del diseño sehaga nueva veduira del terreno que pretende titulo Don Bernardo Yorba Hammado, y mas con exactitud todo el que solicitante y su finado hermano ocupabourg en que estencion à fin de evacuados el informe corresponde'te con la claridad que es necesaria se sepa la cuandos sitios con esta todo el referido terreno y queda revalverse con propriedad lo que fuere juto.

PICO.

Angeles, Febrero 27 de 1846.—Hallandose este jusgado congrava ocupacion se lieve prude este misjores.

Angeles, Marzo 27 de 1846.—Hallandose desocupado este jusgado nombren lu comicion à Don Antonio Coronel y al ecladar Don Luis Lopez, los que sean haran la redusia ale la manera que lo ordenen la super omita y dara lu cuesta por esento, à cuyo efecto apecieron à Coronel y Lopez, y que puclava la à la boudad paside, año yo Juan Gallardo, alcalde, y Juez de 1a. sustanciá decreté mandé con los de asistucia.

Seglur drecho.

JUAN GALLARDO.

Assa: Y'go Coronel.
Leonardo Cota.

Enlafecha sepaso officio respectivo:

26 Exmo. Señor: Concerniente al superior decreto marginal f ha 22 de Febrero ultimo. Nombre data comision que hiciere nueve veduria de la sierra que solicita Don Bernardo Yorba en el piento de Santa Ana y que esta misma comision lo dado cuento con sus trabajos y pone el officio que va à continuacion con cuyo documento podra resolver la superioredad lo que creo justa y convemente. En lo que tenga el honor de elevar à V. E. lu complimiente del presentado decreto.

Ang's, Abril 1°, 1846.

JUAN GALLARDO.

Complimiendo con lo que de me ordena, en suarota 29 del pa. pro. pusé acompañado del citado Don José Maria Lopez, y del Sor. Don Bernardo Yorba al paraye llamado de la Sierra en el Rio de Santa Ana solicitado por el segunda como igualm'te à la parte sobrante que queda de este mismo terreno al N. E. y teniendo à la vista el superior decreto 22 al Febrero que obra en el espediente del referido Sor. Yorba f. 8. o. vaelta 3 frenta como el deceño que anota à la 2 del mismo y demus documentos concermentes, procedo escrugralamete haceda veduria respectiva del mencionado parayé, observando todo las diligencias y reserbas y necesarios à la materia y en consecuencia resulta que altro terreno compiende en su estencion sute citios mas ó menos de y anado major que esta ocupado hace mas de veinte años con bienes de los Sor. Bernardo Yorba y el finado su hermano Don Tomas que la parte que pide el solicitante es la mejor por sus tierras

de labor, pastos y abrevederos y que altro citio se paya un corral
perteneciente al finado Don Tomas y un facal halstado con las
27 serbientes de la vinda de esto veñor igualm'te hize el entyo del
divend que hecho referencia con el punto solicitado y resulta, que anuque es la mismo en su forma demuestran los bientos por lo malfigurados en cun opocision ó las fisis. Al hacer presente à la Señora Doña Vicenta Sepulveda el objeto de mi comision me ha manifestado; 1° que el Sor. Don Bernardo Yorba groderando la ocasion de tener à su cargo los intereses de mi finado esposa Don Tomas, à pedido la parte mejor del terreno de la sierra con quien peynicio el los neuores por quien representa y mi considerar el igual ó mas derecho que estos tienen como lo ha echo vez al exmo. sor. por representacion todo lo quetengo el honor de informar à V. obre quiendo la superior dispocicion y para los efectos que haya sacar adjustandale el espediente fho. Protestando à la vez mi aprecio y consideracion.

Dios y Libertad. Ang's, Abril 3 de 1846.

A. F. CORONEL.
JOSÉ MARIA LOPEZ.

Sor. JUEZ, 1°.
Dn. JUAN GALLARDE.

Pio Pico, gobernador constitutional del departamento de los Californias:

Por cuanto el cuididano Bernardo Yorba ha pretendido para su benificio personal zel de su familia interresso que por largas años ha estado prosequido legalmente llamado de la sierra en las margenes del Rio de Santa Ana colinolante al norte con la sierra y al sur con el mismo rio; practicados previamente las diligencias y anereguaciones
concermentes, usanda de las facultades que meson conferidas
28 à nombre de la nacion Mejicana he venido por decreto de este
dia en concederle el espresado terreno declarandole la propriedad de el por las presentes letras de conformidad con la ley de 18 de Agosto de 1824, y reglamentos de 21 de Noviembre del 1828, à reserva de la aprovacion de la Exma. A. Departamental y baja las condiciones siginentes.

1°. Podra cercarlo sin perjudicar las travesias, caminos, y servidumbres, lo disputaran libre y exclusivamente destinandolo lo al uso ó cultivo que mas le convenza.

2°. Solicitará del juez respectivo que le de la poseson juridica en virtud de este despacho, por el cual se demarcaran los linderos con las majoneras necesarios.

3°. El terreno de que se hace donacion es elde cuatro sitios deganado mayor. El juez que diese la posecion lohare medir conforme ó ordenanza, quedando el sobrante que resulte á la nacion para los usos convenientes. En consequencia mando que teniendose el presente titulo por firme y valedero se tome razon de il en el libro respectivo y se entregue al intersado para su resguardo y demas fines.

Dado en la cuidad de los Angeles en este papel comun por no haber del sellado á quince de Junio de mil ochocientos cuarenta y seis.

PIO PICO.

Por cuanto Dona Vicente Sepulveda ha pretendido para su beneficio personal y el de su familia la parte de un terreno por largos años estado porecido legalmente su depuesto es para D. Tomas
29 Yerba llamadala sierra, en las margenes del Rio de Santa Ana, colmd'te con el Rio de Santa Ana, colmdante el Dn. Bernardo Yerba, y la misma sierra, practicadas previamente las diligencias y averiguaciones concernientes, usando de las facultades que me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno declarando la propriedad de el por las presentes letras de conformidad con la ley de 18 de 1824, y reglamentos de 21 de Noviembre de 1828, á reserva de la aprovacion de la E. A. departmental y vajo las condiciones siguientes.

1°. Podra sercarlo sin perjudicar las travecias caminos y servidumbres, lo disputaran libre y exclusivamente, destinandolo al uso ó cultivo que mas le acomode.

2°. Solicitará del Juez respectivo le de la posesion juridica la virtud de este despacho, por el cual se demarcaran los linderos que las mojoneras necesarios.

3ª. El terreno de que se le hace donacion es de cuatro citis de ganado mayor. El juez que diere la posecion lo hace media conforme á ordenanza, que dando el sobrante que resulte á la nacion para los usos combrenentes. En consequencia mando que servémdore el presente titulo por firmé y valedero se tome razon de il en el libro respectivo y se entregue al interesada para su resguardo y demas fines.

Dado en la cuidad de los Angeles en este papel comun por
30 fatla del sellado á quince de Junio de mil ochocientos cuarenta y seis seis.

Y pilmenden á la intersada que el compaño el de aur respectivo.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such having in my office and under my custody a portion of the archives of the former Spanish and Mexican Territory or department of Upper California, under and by virtue of the second section of the act of Congress approved on the 3d day of March, 1853, providing for the survey of the public lands in California, and for other purposes, do hereby certify that the twenty preceeding and hereunto annexed pages of tracing paper, numbered from 1 to 26 inclusive, exhibit a true and accurate copy of a certain document on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially and affixed my private seal, in lieu of the seal of office, which has not yet been received, at the city of San F'co, Cal., this 7th day of July, 1853.

SAMUEL D. KING,
Survey. Gen'l, Cal'a.

Filed in office Sep. 23, 1852.

GEO. FISHER, *Secretary.*

32 *Posecion de la Sierra à D. Bernardo Yorba, año de* 1846.

PIO PICO, GOBERNADOR CONSTITUCIONAL DEL DEPARTMENTE DE LOS CALIFORNIAS:

Por cuanto el cuidadano Bernardo Yorba, Sen., pretendido para su beneficio personal y el de su familia un terreno que por largos años ha esta da poreyenda legalmente llmado de la Sierra en los margures del Rio de Santa Ana colindante con el misma dio y el rancho del Qemaseal; practicadas previamente los diligencias y averiguaciones consernientes usando de los facultades que me son conferidos à nombre de la nacion Mejicano he venido por decreto de este dio en concederle el espresado terreno de clarando le la propiedad de el las presentes letras de conformidad con la ley de 18 de *de* Agorto, de 1824, y reglamentos de 21 de Novembre, de 1828, a reserva de la aprobacion de la Exma Asamblea departmental y bajo las condiciones siguientes.

1o. Podra circarlo sea perjudicai las travesias caminas y servidumbres lo disputaran libre y esclusivamente destinandalo al uso y cultivo que mas le convenga.

2o. Solicitára del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con los mojoneras necesarias.

3o. El terreno de que se le hace donacion es de cuatro sitios de ganado magor.

El juez que diere la posecion lo hará medir conforme á orde-
33 nanza quedando el sobrante se resulta a la nacion para los usos que sean convementes.

En consecuencia mando que teniendore el presente titulo por pime y valedero se tomi de el razon en el libro respectivo y se entregue al interesado para su resguardo y demas fines. Dado en la cuidad de los Angeles en este papel comun por falra del sellado à quince de Junio. de mil ochocientos cuarenta y seis.

PIO PICO.
JOSÉ MATIAS MORENO.
S'rio Inte'n.

Queda tomada razon de este superior despacho en el libro respectivo. Fecha ut supin.

MORENO.

En la cuidad de los Angeles del departam'te de California à los ocho dias del mes de Julo de mil ochocientos cuarenta y seis, anuento à la solicitud verbal cue hize Don Bernardo Yorba para que se le diere posesion juridica de un paraje llmado la Sierra de los margenes del rio de Santa Ana concedido por el exmo. Señor Gobernador segun lo demuestra el titulo que presento en el aeto pasese por mi y testigos de assistencia al parage que se indica y previa citacion de colindantes drocedase a dar esa posesion con total arreglo el titulo que de fecha de quince de Junio ultimo, ase yo Fernando Cota, regidor de cum del

illustre ayuntam'to, alcalde primero y juez de primera instancia intesino decreté mandé y firmi con los de mi assistencia segun derecho en este papel comun por no haber del sellado, doy feé.

FERNANDO COTA.

Asistencia: YGNACIO PALOMARES.
34 As't'a: JUAN FOSTER.

En seguiola pasi oficio à los señores colindantes manifestando les que iba á remedir la sierra de los margenes del Rio de Santa Ana y poner en posecion de ella, al Señor Don Bernardo Yorba, por lo que se les prevenia estuviesen en sus linderos; estas senores no manifestaron objeccion alguna y quedaron entendidos lo que se pone por diligencia.

LEONARDO COTA.

As'a: YGNACIO PALOMARES.
As'a: JUAN FOSTER.

A continuacion y hallandome en esta ciudad se buscaron cabal gaduras para salir y habiendore conseguido se empendio la marcha y sepone por constancia Cota. En nueve de Julio del mismo año y estando yo en la Sierra de los Margenes del Rio de Santa Ana nombré dos oficiales cordeleros que la fueron Ygnacio Sepularda y Gabriel Garcia los que por no saber escribed se omiten sus firmes, estos oficiales aceptaron y bajo de estilo afrecieron desempeñar fiel y legalmente su encargo y cumplir con el caracter de tales cordeleros lo que asiento por diligencia que autorize y firme con los de asistencia segun derecho Leonardo Cota; asistencia. Ygnacio Palomores; assis'a, Juan Fortu.

Acto contumo y permanente en la sierra estando ante mi los oficiales cordeleros y testigos de assa. hize medir un cordel constante de cien varas el que se mando atum á sus estremos unos sancos de madern y previa observacion y calculo por mi disposicion se tiro el cordel primero desde una lomita que es lindero del Cajon de San Antonio con direccion al este y se contaron alli mil seis cientos varas
35 que remataron en una Cañada Corte de en seguida se tiro el cordel con direcion al norte 45° grados al este y se contaron y medieron siete mil quinientos varas que remataron en la orilla del rio Junto de la toma cercada a una Monte de Sans y se mandó poner alli una mojonera, de aqui y con direccion el sur 60° grados al este se contaron once mil quinientos varas que remataron al pie de la sierra donde hay unos en cinos lo que estan en el lindero del mismo temascal, dondé se mando poner una mojonera. De alli y con direccion al oriente se contaron y midieron trece mil varas que remataron en la misma lomita donde se comenzo; habiendo comparecido los lalindantes en sus respectivos puntos sin manifestar objeccion alguna, concluidas las medidas se dé posecion solemne y juridica del terreno á nombre de la nacion Mejicana al Señor Dn. Bernardo Yorba y quedo satisfecho y terminado el acto lo que autorizo y firmo con los de asistencia segun derecho, Leonardo Cota; asistencia, Ygnacio Palomares; assa. Juan Fsoter; Angeles, Julio diez de mil ochocientos

cuarenta y seis, Dude testimonio al Señor Bernardo Yorba de los presentes obligaciones para que agregando los al titulo se servan de constancia y seguridad, asi yo el juez autorizo decreté y mandé con los de asistencia segun, Leonardo Cota; asistincia, Ygnacio Palomares; assa., Juan Foster; en seguida se dio el testimonio respectivo tachado asi no vale. Concuerdo con su original a que un remite y
36 se haya en el protocolo de cite uña del que se saco corigio y confronte en utos dos fojas de papel comun por falta del sellado, doy feé.

LEONARDO COTA.

Assa.: YGNACIO CORONEL.
Assa.: JULIAN CHAVES.

Filed in office Octo. 15th, 1852.

GEO. FISHER, *Secretary.*

38 *Translation of espediente.*

1845.—Espediente instituted by Dn. Bernardo Yorba, applying for the land called La Sierra.—No. 543.

To his excellency the governor:

I, Bernardo Yorba, owner of the rancho Sn. Antonio, on the Sta. Ana river, and residing in this city, present myself before your excellency, with proper respect and according to law, and say that for more than twenty years I have possessed a place called La Sierra, upon said river, which was occupied jointly with the cattle of my deceased brother, Thomas Yorba, and my own, which union we maintained in perfect harmony, but that now the cattle of the said deceased have passed into other hands, it is convenient for me to ask a division of the lands of the said place La Sierra; and inasmuch as no formal title, such as the laws required, has been obtained, I present this, hoping that your excellency will be pleased to grant me a title corresponding to the map which I have the honor to submit, the extent being about four leagues; wherefore I beseech your excellency to grant this, my petition, because of its necessity and justice. I implore this concession, and declare, &c., as required, &c., hoping that your excellency will receive this on common paper, for want of sealed paper of the proper kind.

Angeles, October 18th, 1843.

BERNARDO YORBA.

39 *On the margin of the above.*

ANGELES, *October 23rd*, 1845.

Let this application be passed to the 1st judge of this capital, that he may make the necessary inquiries and return it to this gov't for decision.

PICO.

[Here follows a map.]

ANGELES, *October* 24*th*, 1845.

In fullfilment of the superior marginal decree of his excellency the governor, which appears on the pending petition, for further information, let proceedings be taken to examine the land which the party solicits, the adjoining land-owners being first cited and other proper steps taken. Thus I, Vicente Sanchez, first constitutional alcalde, decreed, ordered, and signed, with my assisting witnesses, according to law.

V'TE SANCHEZ.

Ass't'g witness : A. F. CORONEL.
Ass't'g witness : FELIPE CASTILLO.

ANGELES, *October* 29*th*, 1845.

On this day the regidor, Dn. Luis Jordan, and syndico, Dn. Vacilio Valdez, were appointed to make the examination of the land mentioned by the petitioner according to the requisites of the law, and in conformity to the map which I noted as come of proceedings, and I authorized and signed, with my assisting witnesses, according to law.

V'TE SANCHEZ.

Ass't'g witness : A. F. CORONEL.
Ass't'g witness : JOSÉ MATIAS MORENO.

40 ANGELES, *October* 30*th*, 1845.

This espediente, on three leaves, was delivered to the commission named.

SANCHEZ.

Commission of the ayuntamiento.

To the 1*st judge :*

In pursuance of your official note of the 29th of last month, in which you ordered me to make an examination of the land, the title to which is solicited by Dn. Bernardo Yorba, I inform you that I and Dn. Bacilio Valdez went to make the said examination and inspection of the place, for which purpose, and in order to effect it, we summoned adjoining owners, as you directed, though there is only one, Doña Vicente Sepulveda ; still, to comply with your order, I directed citation, but no one appeared. Seeing this, and the young men who went with the citations saying that there was no one there but Dona Vicente, and that she sent word that her agent was not there, and that she had no one to send, we went to make the inspection and examine the land, which I report to you is according to the map presented, does not belong to any individual or community, but is a place of land which Bernardo and Don Tomas Yorba (deceased) have possessed for more than twenty years. That which Don Bernardo solicits is not the whole tract, but a considerable portion of it.

This is all we have to bring to your knowledge for such purposes

as it may be proper. We take advantage of the occasion to
41 assure you of our most distinguished consideration. God and liberty.

San Antonio, Nov. 1st, 1845.

LUIS JORDAN.
BACILIO VALDEZ.

To his excellency, the governor:

I, Vicente Sepulveda, widow of the late Dn. Tomas Yorba, and a Mexican by birth, in the best form of law appear before your excellency and say that I am informed that my brother-in-law, Dn. Bernardo Yorba, by a petition addressed to the sup'or authority, has asked for a formal division of the rancho of Santa Ana, and, further, a half of a tract of land adjacent to said rancho. This notice, and my being tutrix of the minor children of the late Dn. Tomas Yorba and myself, compel me to apply to your excellency, and to show to you that to divide the land as it now is will be nothing less than to ruin my family, because the place which I occupy is the smallest of the Santa Ana, because when my late husband, in his lifetime, tried to make the partition of the land the Yorbas were in possession of the place named Las Sierras, "and as Alvarado granted it to Dn. José Sepulveda, the rancho is diminished and reduced to a very small extent, and is of no service to my family, but it will not prejudice the family of Dn. Bernardo Yorba, for he has the cajon de S'ta Ana, nor that of Dn. José A. Yorba, because of the right which he has established in Las Bolmas, in the place of D'na Catarina Ruiz; but if your excellency
42 thinks the subdivision of these places necessary, let it be made according to law, all enjoying equal benefits in the land, grazing, and springs, so that it shall not be permitted that one person shall be benefitted and the other injured.

Wherefore I beseech your excellency that, in view of what is said, this petition may be united to that which Dn. Bernardo Yorba presented, and I ask that it may be considered when this matter is determined, a justice which I hope, your excellency, and of which I shall receive favor. I swear that this is not done maliciously, &c., praying that this may be received on common paper, for want of sealed.

Angeles, October 27th, 1845.

(Not signed.)

ANGELES, *October 27th*, 1845.

Let this application be handed to the 1st judge of this capital and attach this to the espediente of Dn. Bernardo Yorba, that he may reply to its contents and return it to the government for a decision.

ANGELES, *October* 28, 1845.

In fullfilment of the superior marginal decree, make known the foregoing application to Dn. Bernardo Yorba, that he may reply to its contents and attach it to his espediente, as his excellency orders.

Thus I, Vicente Sanchez, 1st alcalde and judge of 1st instance, decreed, ordered, and signed, with the assisting witnesses, according to law.

VICENTE SANCHEZ.

Assisting: A. F. CORONEL.
Assisting: JOSÉ MATIAS MORENO.

43 ANGELES, *October 30th*, 1845.

On this day Dn. Bernardo Yorba presented himself, and, being informed of the foregoing, he asked that the espediente be delivered to him for five days, that he might reply to the application of Doña Vicenta Sepulveda. This was his answer, and he signed this with me and the assisting witnesses, according to law.

VTE. SANCHEZ.
BERNARDO YORBA.

Assa: A. F. CORONEL.
Assa: LUIS JORDAN.

On the same day the espediente was delivered to Dn. Bernardo Yorba for 5 days upon six sheets.

(Rubric.)

To the judge of the 1*st instance of the city and its vicinity:*

I, Bernardo Yorba, appear before your tribunal in all form of law and say that I have received the representation of the supreme government, made by Dña. Vicenta Sepulveda, widow of my deceased brother Thomas, and the decree in continuation which you saw fit to issue, and by which it was delivered to me for five days to reply. I now do so with proper respect, and represent that it appears that the said Vicenta Sepulveda misapprehends the matter, since my first petition, which I presented to the government, did not speak of a partition of lands, but was an application for a title, because there is no formal one of a part of the place which my said brother and I have occupied for a period of twenty years in the Sierra, and this
44 has no connection whatever with the rancho of Sta. Ana, which belongs to all the brothers by inheritance. If the said Dña. Vicente does not think proper to ask to be second in the land she occupies, I do, and for this reason I insist on imploring the supreme government to give me the corresponding title according to the map contained in the espediente. From this results no injury to the heirs of Sta. Ana nor to the said Señora, since what I ask to obtain is the document required by law to make the possession legal; and I cannot do less than confess that if till now confidence rested in my carelessness, I ought now to procure it, and not expose my occupation of so many years to the chance of future times.

Now, in regard to the place of Sta. Ana, since the said Señora brought the matter forward, I say that I ask the division as a partition of an inheritance, as well because it is very necessary for my interest as because a thing inherited ought to be known as a portion to my successors, such as it is. Therefore said partition is required.

Dña. Vicente alleges an injury if the division is made. I do not know the reasons why it can injure, since I see the contrary, and know that these results for all the benefit of knowing what belongs exclusively to each. But supposing, without admitting it, that she will be injured, should I be subjected to suffer one evil for a presumption that it may produce her a benefit? No. Neither she, nor I, nor the other heirs, I am sure, will be injured in any way. I am as far from believing this as I am convinced that it is useful to make
45 it. For what is said I hope you will be pleased to order partition to be made of the rancho of Sta. Ana, it being in conformity to right and to the authority of the law, as may be seen by consulting the wise jurists who will agree upon it. Nevertheless, without this reference, the light of reason alone suffices to convince us that society uniting men guarantys the particular interests of each, and would not attain its end if any one should wish to prevent the precise improvement and knowledge of what is possessed. The land of Sta. Ana belongs to several heirs, and to me as one of them, but, as till this time the part is not determined. I again repeat that the partition suits me, urging in my favor right and the law which directs it. Wherefore, complying with what is ordered by your tribunal in its decree, on page 6, I ask and beseech that what I have said may be done. It being just, I make the necessary oath, and hope that you will permit me the use of the common paper, for want of the sealed.

S. Antonio, January 3, 1846.

BERNARDO YORBA.

EXCELLENT SIR: I have the honor to place in your hands, on eight leaves, the espediente had by Don Bernardo Yorba, which contains the report of the committee which made the examination of the land in question, but there was wanting the necessary appearance of the adjoining owners and others interested, in order that, according to what is alleged and denied, the superior authority could form
46 an exact judgment: but, as time passes, and as Don Bernardo Yorba urges, it is necessary to forward it to your excellency, in order that you may determine what you think just.

Angeles, January 5th, 1846.

JUAN GALLARDO.

{ Government of the Department of the Californias. }

ANGELES, *February* 22, 1846.

Return this espediente to the 1st alcalde of this capital, in order that, in view of the map, he make a new examination of the lands for which Don Bernardo Yorba asks a title, examining, besides, with exactness all that which the applicant and his late brother occupied, and its extent, to the end that the corresponding report being completed with the clearness which is necessary, it may be known of how many leagues all the said land consists, and may be determined with propriety what is just.

PICO.

ANGELES, *February* 23*d*, 1846.

This court being occupied with important business, this matter is postponed.

(Rubric.)

ANGELES, *March* 27*th*, 1846.

This court being unoccupied, name as a commission Dn. Antonio Coronel and the overseer, Dn. José Lopez, who shall proceed to make the examination in the manner ordered by the supreme authority, and shall report in writing. For which purpose said Coronel and Lopez shall be required set out as soon as possible. Thus I, Juan Gallardo, 1st alcalde and judge of first instance, decreed and
47 ordered, with assisting witnesses, according to law.

JUAN GALLARDO.

Asst'g: YG'O CORONEL.
Asst'g: LEONARDO COTA.

On the same day was issued the proper official letter.

(Rubric.)

In accordance with the superior marginal decree of the 22d of February last, I named another commission to make a new examination of the land which Don Bernardo Yorba solicits at the place of Sta. Ana, and this new commission has made report of its labors, and presents the official letter which follows this, with which document the superior authority can determine what is just and convenient.

This is what I have the honor to say to your excellency in fulfilment of the decree before referred to.

Angeles, April 16th, 1846.

JUAN GALLARDO.

Complying with what you order me in your note of the 27th of last month, I went, accompanied by the overseer, Dn. José Maria Lopez, and by Don Bernardo Yorba, to the place called La Sierra, on the Sta. Ana river, solicited by the latter, as also to the place where the surplus land of this tract is to the NE., and having in view the superior decree of 22d of February, which is attached to the espediente of the said Yorba. at page 8 front, 9 reverse, and the map which appears at page 2 of the same, and other documents relating to the matter, I proceeded scrupulously to make the
48 proper examination of the said place, observing all the precautions necessary in the matter, and this is the result: That this land embraces in its extent seven leagues, (sitios de ganado mayor,) more or less; that it has been occupied more than twenty years with the property of Dn. Bernardo Yorba and his brother, the late Dn. Tomas; that the part which the applicant solicits is the best for its tillable lands, pasturing and watering places, and that on the said place there is a corral belonging to the late Dn. Tomas, and a hut occupied by the servants of his widow. Also I made the com-

parison between the map referred to and the place solicited, and it results that though it is the same in its form, the courses (points of the compass) being incorrectly drawn, are almost exactly opposed to their true direction.

Upon making known to Doña Vicenta Sepulveda the object of my commission, she has declared to me that Don Bernardo Yorba, taking advantage of his having in his charge the interests of her late husband, Don Tomas, has asked the best part of the land of the Sierra, to the great prejudice of the minors whom she represents, and without taking into consideration the equal or greater right which they have, as she has shown his excellency by a representation.

All of which I have the honor to report to you, in pursuance of the superior order, and for the purposes which may be proper, annexing it to the espediente, with assurances of my respect and consideration.

God and Liberty. Angeles, April 30th, 1846.

A. F. CORONEL.
JOSÉ MA. LOPEZ.

To the first Judge, DON JUAN GALLARDO.

49 Pio Pico, constitutional governor of the department of the Californias:

Whereas the citizen Bernardo Yorba has asked, for his personal benefit and that of his family, a tract of land which for many years he has been legally possessed of, called La Sierra, on the margin of the river Sta. Ana, bounded on the north by the sierra and on the south by said river, the proper proceedings having been first taken and inquiries made, in the exercise of the powers which are conferred on me in the name of the Mexican nation, I have, by decree of this date, granted him the said land, declaring it his property by these presents, in conformity to the law of the 18th August, 1824, and regulations of the 21st of November, 1828, reserving the approval of the excellent departmental assembly, and under the following conditions:

1st. He may enclose it without injuring the crossings, roads, and servitudes; he may enjoy it freely and exclusively, applying to it the use and cultivation which best suits him.

2d. He shall solicit the proper judge to give him the juridical possession in virtue of this decree, by whom the boundaries shall be marked out with the necessary landmarks.

3d. The land of which donation is made him is four leagues (sitios de ganado mayor.) The judge who gives the possession shall have it measured in conformity to the ordinance, the surplus thereof to remain to the nation for the uses which it may think convenient.

50 Wherefore I order that this title, being held firm and valid, be registered in the proper book and be delivered to the party interested for his protection and other purposes.

Given in the city of Los Angeles, on this common paper, there being none sealed, the 15th of June, 1846.

PIO PICO.

Whereas Doña Vicenta Sepulveda has asked, for her personal benefit and that of her family, part of a tract of land which for many years her deceased husband, Dn. Tomas Yorba, legally possessed,

called La Sierra, on the bank of the river Sta. Ana, bounded by Dn. Bernardo Yorba and the said sierra, the proper proceedings having been first taken and inquiries made, using the powers which are conferred upon me, in the name of the Mexican nation, I have, by decree of this date, granted to her the said land, declaring to her the ownership thereof by these presents, in conformity to the law of the 18th of August, 1824, and the regulations of the 21st of November, 1828, reserving to the approval of the excellent departmental assembly, and under the following conditions:

1st. She may enclose it without prejudicing the crossings, roads, and servitudes; she may enjoy it freely and exclusively, applying it to the use and cultivation which best suits her.

2d. She shall solicit the proper judge to give her juridical possession in virtue of this decree, by whom the boundaries shall be marked out with the necessary landmarks.

51 3d. The land, of which donation is made to her, is four leagues, (sitios de ganado mayor.) The judge who gives the possession shall have it measured in conformity to the ordinance, the surplus, if any, to remain to the nation for the uses which may be convenient, and shall require the party interested to present the appropriate map.

Wherefore I order that this title, being held firm and valid, be registered in the proper book, and be delivered to the party interested for her security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of sealed, the 15th of June, 1846.

I certify the above to be a true and correct translation.

Office of the secretary of the commission, &c., &c., San Francisco, Feb'y 11th, 1854.

GEO. FISHER, *Secretary.*

Filed in office February 8th, 1854.

GEO. FISHER, *Sec'y.*

52 *Document A, annexed to the deposition of Ygno. F. Coronel.*

{ Governor del Depto. de las Californias. }

Pio Pico, constitutional governor of the department of the Californias:

Whereas the citizen Bernardo Yorba has asked, for his personal benefit and that of his family, a piece of land which for many years he has legally possessed, called the Sierra, on the banks of the river Santa Ana, bounded by the said river and the rancho of Temiscal, the proper proceedings having been taken and inquiries made, in the exercise of the powers which are conferred upon me, in the name of the Mexican nation, I have, by a decree of this day, granted him the said land, declaring it his property by these presents, in conformity to the law of the 18th of August, 1824, and the regulation of the 21st of November 1828, August to the approval of the departmental assembly and under the following conditions:

1st. He shall have power to enclose it without injury to the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, applying it to the use and cultivation which may best suit him.

2d. He shall solicit the proper judge to give him the judicial possession in virtue of this decree, by whom the boundaries shall be marked with the necessary monuments.

3d. The land of which donation is made is four leagues "de ganado mayor."

The judge who shall give the possession shall have it measured in conformity to the ordinance, leaving the surplus, if any remains, to the nation for the purposes for which it may be required.

53 Wherefore I order that this title, being held firm and valid, be recorded in the proper book and be delivered to the party interested for his security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of sealed, the 15th of June, 1846.

PIO PICO.

JOSÉ MATIAS MORENO,
Sec'y ad int.

This superior decree is recorded in the proper book, date as above.
MORENO.

In the city of Los Angeles of the department of the Californias, on the 18th of July, 1846, in compliance with the verbal request of Don Bernardo Yorba for the judicial possession of a place called La Sierra, on the banks of the river Santa Ana, granted by his excellency the governor, as shown by the title herewith presented, let assisting witnesses go with me to the measurement, and after notice to the adjoining owners, let proceedings be taken to give possession in exact conformity to the title of the 15th of June last.

Thus I, Leonardo Cota, presiding officer of the ayuntamiento, first alcalde and judge of the 1st instance, decreed, ordered, and signed, with assisting witnesses, according to law, on this common paper, for want of sealed. Certified.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

Then I gave notice to the adjoining owners, informing them that I was going to remeasure the Sierra on the banks of the river Santa Ana and put Don Bernardo Yorba in possession of it, where-
54 fore they were warned to be upon their boundaries. These persons made no objection when informed. Entered officially.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

In continuation, being in this city, horses were brought to go out on, and having obtained them we started. Entered officially.

COTA.

On the 19th of the same year, being at the sierra on the banks of the river Santa Ana, I appointed two chain-bearers, Ygnacio Sepulveda and Gabriel Garcia, whose signatures are omitted, they not knowing how to write. They accepted and took the usual oath to discharge their duties faithfully and legally, which was done officially. Authorized and signed by me, with assisting witnesses, according to law.

LEONARDO COTA.

Assa : YGNACIO PALOMARES.
Assa : JUAN FOSTER.

Being still at the sierra, and the chain-bearers and assisting witnesses being present, I caused a cord to be measured one hundred varas long, to the extremities of which I ordered sticks of wood to be attached, and after observation and calculation, by my direction the measurement was begun at a small hill (lomita) on the boundary of the Cajon de San Antonio, and continued to the eastward 1,600 varas to a ravine or valley where wood is cut, (Catada Corte de Madera;) thence about north 45° east 7,500 varas to the bank of the river, close to the hill (loma) which is near a willow thicket, (monte de saus,) and here a mark was ordered to be put; thence about 60° east, 11,500 varas to a dry creek, (arroyo seco,) the boundary of Temescal on a summit of the mountain of Huata, (pecacho de la Sierra de la Huata;) thence in a southerly direction 5,000 varas to the foot of the mountain, where there are some oak trees, which are on the boundaries of the said Temescal, and here a landmark was ordered to be placed; thence in an easterly direction 13,000 varas to the same lomita where the measurement begun. The adjoining owners appeared on their respective boundaries, without making any objection. The measurement being concluded, I gave solemn and judicial possession, in the name of the Mexican nation, to Don Bernardo Yorba, wherewith he was satisfied, and this act concluded, which I authorised and signed, with the assisting witnesses, according to law.

LEONARDO COTA.

Assa: YGNACIO PALOMARES.
Assa: JUAN FOSTER.

ANGELES, *July* 10*th*, 1846.

Let a copy of these proceedings be delivered to Don Bernardo Yorba, in order that, being attached to his title, it may give him evidence and security.

Thus I, the judge, officially decreed and ordered, with assisting witnesses, according to law.

LEONARDO COTA.

Assa : YGNACIO PALOMARES.
Assa : JUAN FOSTER.

The proper copy was then given him, the erasure of the word "assa" made before signing. Compared with the original, which

is among the records of this year, from which this is taken
56 and correctly copied upon two sheets of common paper, for want of sealed, as I certify.

LEONARDO COTA.

Assa : YGO CORONEL.
Assa : JULIAN CHAVES.

Filed in office October 15th, 1852.

GEO. FISHER,
Secretary.

58 *Opinion.*

BERNARDO YORBA
vs.
THE UNITED STATES. } La Sierra.

The petitioner in this case has placed on file, duly proved, a grant obtained from Governor Pio Pico for the place called La Sierra, containing four square leagues.

He has also placed on file an office copy, duly proved and authenticated, of the juridical measurement of said tract of land, performed and executed on the 19th day of July, A. D. 1846. There is no proof that any approval was ever made by the departmental assembly.

Several depositions are on file in this case, taken in regard to the occupancy and inhabitancy of the land by the grantee, which, after a careful examination, will be found to contain no material discrepancy with each other. It is recited in the grant that the grantee had been legally possessing the land granted for many years. If this recital in the grant was unexplained, the inference might be drawn that he lived upon the land and had occupied it in person. By reference, however, to the petition of the parting asking for the land, and which is the first paper in the espediente filed in the case, it will be seen that the claimant describes himself in the following words, to wit: I, Bernardo Yorba, owner of the rancho of San Antonio, Sta. Ana and river, and residing in this city, present myself before your excellency, &c., &c.

59 From the statement here made, it is plain that the claimant at the date of his petition to the governor did not reside on the land in question, but that he resided in the city of Los Angeles. Abel Stearns, a witness on the part of the claimants, states, in his deposition, that he knew the place granted from the years 1834 and 1835, and that it was occupied from that time, and he believed previously, by James and Bernardo Yorba, with cattle and other stock. He then explains the kind of occupation to which he refers in the following words: Their residence was not on the land. It was grazing land used for the keeping of stock. And he then adds, the occupation has been continued in the family until the present time. The statements here made correspond with the declaration made by the party himself in his petition, as above stated, and shows clearly that the party held the land as a grazing rancho, and that he never lived upon the place in person.

The deposition of Ignacio Coronel shows the particular kind of occupation which the claimant and his brother Thomas had of this

place. After stating that he first saw the land in 1837, he says it has been occupied by Tomas and Bernardo Yorba, who had houses on it occupied by their servants, and had cattle there; and they occupied it together until the death of Tomas, in 1845, at which time he says that the land was divided, and that the land granted to
60 Bernardo has been occupied by him ever since the grant. The meaning which this witness evidently attached to the word occupied is explained by himself in the previous part of his depotion; he means that it was occupied by the servants of the grantee, and if there was any other kind of occupation, it should have been shown.

A single question by that officer representing the government would in this case have explained in the ambiguity of the language used by the witness, but no such question is propounded.

José Antonio Carrillo states in his deposition that Bernardo had occupied the same land since the year 1833, and that it had been previously occupied by Antonio Yorba, the father of Bernardo Yorba, from the year 1810, in company with the Peraltas. This witness, as well as the others, seemed to consider that any kind of reputed ownership of the land was expressed by using the word occupy.

All the testimony filed in the case goes to show that the claimant occupied the land both before and after the grant through others, and not in person. Indeed, it is in proof that the land is situated forty miles from the place where the claimant resided at the time he asked for the grant of the place called La Sierra.

Although this place was evidently held for a long time by the Yorba family as a grazing rancho, it is not pretended that they ever had a title of any kind previous to the one under which Bernardo now claims. The case has none of those merits which attach to a
61 homestead, but was doubtless occupied for grazing purposes under the privileges which belonged to every citizen as long as the lands of the nation remained public, and before they were reduced to private property.

The party having failed to show anything like a personal inhabitancy of the land claimed according to the principles heretofore laid down by this commission, he has not entitled himself to a confirmation of his claim.

There is, however, another insuperable objection to the confirmation of this claim: there is no sufficient or different segregation of the land granted. The description of the land as contained in the grant is of itself altogether too vague and indefinite; a juridical measurement of the land was therefore indispensable. The record of judicial measurement which the party placed on file is wholly unintelligible, and its calls are so inconsistent with each other that it is impossible to give them a definite location.

For these reasons we are of opinion that the claim in this case should be rejected.

Filed in office February 14th, 1854.

GEO. FISHER, *Sec'y.*

62 *Decree.*

BERNARDO YORBA
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office February 14th, 1854.

GEO. FISHER, *Sec'y.*

Dissenting opinion of Thompson.

I dissent from the opinion of the majority in this case for the reasons set forth in my dissenting opinion in case Anastacio Carrillo *vs* The United States, for the place called "Punta de la Concepcion;" and for the further reason that the land is, in my opinion, sufficiently identified by the description contained in the grant and act of juridical possession.

R. AUG. THOMPSON, *Com'r.*

64 *Order.*

And it appearing to the satisfaction of the board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

66 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing fourty-four pages, numbered from 1 to 44, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 382

on the docket of the said board, wherein Bernardo Yorba is the claimant against the United States for the place known by the name of La Sierra.

[SEAL.] In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this thirtieth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Filed November 8th, 1854.

C. E. CARR, *Cl'k.*

Appeal, notice of.

68 United States district court for the southern district of California.

BERNARDO YORBA, appellant, *vs.* THE UNITED STATES, appellees.	Notice of intention to prosecute the appeal from the decision of the board of United States land commissioners.

Bernardo Yorba, claimant of the rancho called "La Sierra" in the former county of Los Angeles, but now in the county of San Bernardino and southern district of California, hereby gives notice of his intention to prosecute an appeal from the decision of the board of commissioners "to ascertain and settle the private land claims in the State of California," rendered in his claim for the said land, which was presented to the said board of commissioners, and by them rejected. His claim being that which is numbered on the docket of said board of commissioners No. 382, the transcript whereof, as filed in the office of the clerk of the district court of the United States for the southern district of California, is numbered No. 126.

MYRON NORTON,
Att'y for Appellant.

Filed Jan'y 12th, 1855.

C. E. CARR, *Cl'k.*

70 OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 17th January, 1855.

BERNANDO YORBA
vs.
THE UNITED STATES. } 382.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September,

1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed March 8th, 1855.

C. E. CARR, *Cl'k.*

72 U. S. district court for the southern district of the State of California.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee.

To the Hon. Isaac S. K. Ogier, district judge of the United States for the southern district of California:

Your petitioner Bernardo Yorba, a resident of the county of Los Angeles, in said district, respectfully represents that he was the claimant before the board of the U. S. commissioners to ascertain and settle private land claims in the State of California, in case No. 382, for a tract of land situate in said county and district, containing four square leagues of land more or less, and known by the name of La Sierra.

That said tract of land was granted to your petitioner by Pio Pico, then constitutional governor of California, by virtue of authority in him vested on the 15th day of June, 1846, and juridical possession thereof given on the 19th day of July, 1846.

That your petitioner has continued from the time of said grant to live upon and occupy said land with his family and stock up to the present time and now occupies the same.

Your petitioner further represents that on the hearing of said claim by said commissioners, the same was rejected and declared to
73 be invalid.

That a transcript of the proceedings of the said commissioners, and of the documentary evidence and testimony of the witnesses in said case, was duly filed with the clerk of this court on the 8th day of November, 1854, and that on the 12th day of January, 1855, the said claimant filed in the office of said clerk a notice of his intention to prosecute an appeal from the decision of said commissioners.

Your petitioner, therefore, prays that this hon. court will review the decision of the said commissioners and decide on the validity of said claim, and declare the same to be good and valid, and for such other or further relief as shall seem consistent with law and equity.

MYRON NORTON,
Att'y for appellant.

Filed Octo. 2d, 1855.

C. E. CARR, *Cl'k.*

Summons.

74 UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to P. Ord, att'y of the U. S. for the south. d't of Cal'a, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California on the 2d day of October, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Bernardo Yorba, praying said court to review the decision of the U. S. land commissioners rejecting his claim to a tract of land called La Sierra, and that you are required to appear at said court in said city within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the city of Los Angeles, this 7 day of December, A. D. 1855.

C. E. CARR, *Clerk*,
By SAM'L R. DUMMER, *Deputy.*

75 Received December 7th, 1855.
EDWARD HUNTER,
U. S. Marshal,
Per M. L. GOODMAN, *Dep'ty.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. attorney, by delivering to him personally a true copy of the same, at the city of Los Angeles, in the southern district of California, on the eleventh day of February, A. D. 1855.

EDWARD HUNTER,
U. S. Marshal,
Per M. L. GOODMAN, *Deputy.*

Sworn and subscribed before me this 11th Dec., 1855.
C. E. CARR, *Cl'k.*

Motion to take further testimony.

76 District court of the United States, southern district of California.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee.
} No. 126. "La Sierra."

And now at this day comes the said appellant, by Myron Norton, his attorney, and moves the court that an order be entered in this

case to take additional testimony therein, as well on the part of the said appellant as the said appellee.

MYRON NORTON,
Att'y for Appellant.

Filed October 8th, 1855.

C. E. CARR, *Cl'k.*
Per J. W. ROSS, *D'p'ty.*

Answer of U. S. dist. att'y.

78 In the district court of the United States for the southern district of California.

Los Angeles, December term, 1855.

Hon. Isaac K. Ozier, judge.

BERNARDO YORBA, appellant, *vs.* THE UNITED STATES, appellees. } On appeal from the commission to ascertain and settle private land claims in California, No. 126, transcript No. 382.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Bernardo Yorba, for review of decision of United States land commissioners, says: That he denies all and singular each and every allegation in said petition contained; and further, this respondent denies, generally, the validity of the alleged title to the land claimed by him.

And the said respondent prays that this honorable court will affirm the decision of the said United States land commissioners in said case, and decree the said alleged title to be invalid, and general relief.

P. ORD,
Attorney of the United States for the South'n District of California.

Filed Dec. 14th, 1855.

C. E. CARR, *Cl'k.*

Depo. of Carlos Dominguez.

80 U. S. dist. court, south. dist. of Cala.

BERNARDO YORBA, app'l't, *vs.* THE UNITED STATES, app'l'e, } No. 126.

Deposition of Carlos Dominguez, a witness on the part of appellant, taken, by consent of parties, before Charles E. Carr, U. S. commissioner appointed to take testimony in this case. Present: Agustin Olvera, attorney for claimant; P. Ord, U. S. attorney. Carlos Dominguez, being duly sworn, deposes and says:

O. Morgan sworn as interpreter.

Ques. What is your name, age, and place of residence?

Ans. My name is Carlos Dominguez; my age is 47 years; my residence the county of Los Angeles.

Ques. Do you know a place called "La Sierra?" If yea, where is it situated, and who does it belong to?

Ans. I know the place called "La Sierra," it is situated in the county of San Bernardino; and belongs to Don Bernardo Yorba.

Ques. Are there any prominent landmarks on said place by which it can be known? And, if so, what are they?

Ans. Among the people of the country it is well known as the mountain ranch of Bernardo Yorba.

Ques. Do you know a place called Temascal? If yea, state if it is near the aforesaid rancho, and on which side. (Objected to by the U. S. att'y on the ground of irrelevancy.)

81 Ans. I do; it adjoins the rancho on the east side.

Ques. Do you know if there is a river running near this ranch? If yea, what is it called, and on what side does it run?

(Objected to by the U. S. att'y.)

Ans. The river called Santana runs on the north side of said ranch.

Ques. Besides the mountain already mentioned, is there any other near this rancho? If yea, what is it named; and on which side of the rancho is it situated?

(Objected to by the U. S. att'y.)

Ans. There is; it is called the mountain of Santiago, and is on the south of the ranch.

Ques. Do you know of any other rancho in the county of San Bernardino, known by the name of La Sierra?

Ans. I do not.

Ques. Are there other mountains near the aforesaid ranch? If yea, state whether the ranch before mentioned could be distinguished from them.

Ans. There is no other mountain of a similar character or appearance?

Ques. Do you know if Bernardo Yorba has lived, at any time, on the aforesaid rancho?

Ans During the marking and branding of cattle he was there personally, and at other times his sons and persons in his employ were on the rancho.

Ques. Do you know if there is any kind of improvement or property on the rancho? If yea, state what they are.

82 Ans. There are; houses, corrals, and lands under fence for cultivation on the rancho. There are also cattle and horses on the ranch belonging to Bernardo Yorba.

Ques. Have the limits or boundaries of the said ranch, as claimed by Bernardo Yorba, ever been disputed by any of his neighbors?

Ans. To my knowledge they never have.

Cross-examined.

Ques. Where were you born?

Ans. In San Diego.

Ques. Where do you now live?

Ans. On the Santa Ana river, on my own rancho, which has no particular name.

Ques. Did you ever have a grant for it?

Ans. Yes; it belongs to my wife, and granted to her ancestors in the time of the king, and from them inherited by her; my wife's father was named Juan Peralta; where I now live was part of the Peralta ranch, granted in the time of the king to the ancestors of my wife.

Ques. How far is it from the house of Yorba, where he now lives, to the rancho of La Sierra?

Ans. About three leagues.

Ques. What is your occupation?

Ans. I am a laborer.

Ques. In whose employment are you at the present time?

Ans. In no one's.

Ques. Have you not been of late in the employment of Yorba?

83 Ans. I have served him for friendship's sake, but never with the expectation of receiving wages.

Ques. How long have you known the rancho of La Sierra?

Ans. Since the year 1834.

Ques. How do you know that the place called Temescal adjoins the rancho of the Sierra?

Ans. I have worked on the place on many occasions, and the lands belonging to the rancho de la Sierra have been pointed out to me by Yorba, the owner.

his
CARLOS + DOMINGUEZ.
mark.

worn and subscribed this 5th day of Feb'y, 1856, before me.
C. E. CARR, *Cl'k.*

Filed Feb'y 5th, 1856.

C. E. CARR, *Cl'k.*

84 BERNARDO YORBA, app'l't, *vs.* THE UNITED STATES, appel. } No. 126. La Sierra.

Depo. of J. J. Warner.

Deposition of J. J. Warner, a witness on the part of appellant in the above case, taken at Los Angeles this 18th day of Feb'y, 1856, before Chas. E. Carr, U. S. com'r for the State of California.

Present: Norton and Olvera, att'ys for appellant, and P. Ord, U. S. att'y.

J. J. Warren, being duly sworn, in answer to questions propounded by counsel for the several parties, states as follows, to wit:

Ques. What is your name, age, and place of residence?

Ans. My name is J. J. Warner; my age is 48 years; my residence San Diego.

Ques. Do you or not know the rancho called La Sierra, claimed by Bernardo Yorba, in this case? And if so. in what county is it situated; and how long have you known it?

Ans. I know it. It is partly, or in whole, in the county of San Bernardino, which formerly composed a part of the county of Los Angeles. I have known it for twenty-three years.

Ques. Do you know a place or rancho called Temescal? And if so, state its locality and position relative to the rancho of La Sierra.

Ans. I know it. It is situated on the southeast side of La Sierra.

Ques. Does it not adjoin the Sierra?

85 (Objected to by the U. S. att'y.)

Ans. It does.

Ques. Do you or not know a place or rancho called "Gnapa?" And if so, state its location and position relative to the rancho of La Sierra?

(Objected to by the U. S. att'y.)

Ans. I know it. It is situated northeasterly of La Sierra.

Ques. Do you or not know the sierra or mountains called Santiago? If so, state their position and locality with reference to the rancho of La Sierra.

(Objected to by the U. S. att'y.)

Ans. I know of such a range of mountains. It lies along the southwestern side of La Sierra.

Ques. Do you know the river called Santa Ana? And if so, state its position and course relative to the ranch of La Sierra.

Ans. I know the river. It runs along on the northerly side of this rancho; its course being from the northeasterly to a southwesterly direction.

Ques. How far is it from the river Santa Ana to the northwestern boundary line of Temescal?

Ans. I should judge about seven miles.

Ques. How far is it from the Sierra Santiago to the southwestern boundary line of the rancho called "Gnapa?"

(Objected to by the U. S. att'y.)

Ans. I should judge about four or five miles.

Ques. Are or are not the places and objects which you have mentioned called Temescal, Gnapa, Sierra Santiago, and river Santa Ana, well-known and recognized places and objects? And have they or not been thus well known and recognized ever since you were

86 acquainted with the rancho de La Sierra?

(Objected to.)

Ans. They are and have been.

Ques. Do or not the lands claimed in this case, called rancho de La Sierra, lie within the places and objects which you have mentioned?

(Objected to by the U. S. att'y.)

Ans. They do.

Ques. State about how much land is embraced within the places and objects you have described.

(Objected to by U. S. att'y.)

Ans. I should think about three or four square leagues.

Ques. Look upon the map contained in the transcript in this case and state whether or not it is a correct delineation of the lands claimed in this case, called La Sierra; and whether or not the points of compass are correctly marked on said map.

(Objected to by the U. S. att'y.)

Ans. I think it is, generally, a pretty correct delineation of the lands. The points of compass are not correct.

Ques. State in what respect the points of compass are incorrect as marked on the map.

(Objected to by the U. S. dist. att'y.)

Ans. The cardinal points are there reversed; north should be where south is, and east where west is.

Ques. Do you or do you not know the place or rancho called San Antonio? And if so, state its position relative to the rancho of La Sierra.

(Objected to by U. S. att'y.)

87 Ans. I know it. It lies on the northwest; the two ranchos adjoining for about one mile, or separated solely by the river Santa Ana.

Cross-examined by the U. S. att'y.

Ques. What is your profession or occupation?

Ans. I am a farmer.

J. J. WARNER.

Deposition closed.

Sworn to and subscribed this 18th day of Feb'y, A. D. 1856, before me.

C. E. CARR, *Cl'k.*

Filed Feb'y 18th, 1856.

C. E. CARR, *Cl'k.*

88 *Depo. of Henry Hancock.*

BERNARDO YORBA, appellant, *vs.* THE UNITED STATES, appellee. } Case No. 126.—For "La Sierra."

Deposition of Henry Hancock, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Monday, the 19 day of January, A. D. 1857, at 2½ o'clock p. m. on said day, on behalf of the appellant, by the consent, and to be used as testimony in a certain cause now pending in the U. States district court for the south. dist. of California, being case No. 126 on the docket of said court, wherein Bernardo Yorba is appellant, and the United States are appellees.

Present: Olivera & Horton, attorneys in behalf of the appellants, and P. Ord, U. S. dist. att'y, in behalf of appellees.

Quest. What is your name, age, and place of residence?

Ans. Henry Hancock; I am 34 years of age, and I reside in Los Angeles county, State of California.

Ques. Are you a surveyor by profession?

Ans. I am a surveyor. I am now a United States deputy surveyor, and have been such since 1853, in the State of California, and am now also the county surveyor of Los Angeles county.

Ques. Who was the deputy surveyor under you in the months of October and November, in the year 1855?

Ans. George Hansen.

Ques. Do you know the rancho called "La Sierra," claimed
89 in this case by Bernardo Yorba, and how long have you known it?

Ans. I do. I have known it since 1853, at which time I run township lines in its vicinity, but at the time I had no distinct knowledge of its exact locality, but, since the latter part of 1855, I have known what the claimants claimed to be the tract of land embraced in said ranch.

Ques. Do you know whether said ranch has been surveyed; and if so, when, and by whom?

Ans. I do. It was surveyed by George Hanson, in the month of October, A. D. 1855.

Quest. A map is here shown to the witness, marked A. C. S., and made a part of this deposition, when the witness is asked to state whether or not the said map is a correct delineation of the tract of land called "La Sierra," and claimed by Bernardo Yorba.

(Objected to by U. S. att'y.)

Ans. To the best of my knowledge and belief it is.

Ques. Do you know the place or rancho called the "Rincon;" and if so, state what direction it is, and how far from the rancho "La Sierra."

(Objected to by U. S. att'y.)

Ans. I know that the tract of land adjoining the rancho "La Sierra," on the west and on the opposite side of Santa Ana river, is called the Rincon.

Ques. Do you know the ranch called the Temascal; and if so, in what direction, and how far is it from the rancho "La Sierra."

(Objected to by U. S. att'y.)

90 Ans. I know the tract of land adjoining the rancho "La Sierra" on the southeast to bear the name of rancho Temascal.

Ques. Do you know the tract of land called "Gnapa," and how is it situated in reference to the rancho "La Sierra?

(Objected to by U. S. att'y.)

Ans. I have understood that the tract of country adjoining "La Sierra" on the north, and bordering on the river, bore the name of "Gnapa."

Ques. State, as near as you can, how much land is embraced within the places you have named, and as described on said map.

(Objected to by U. S. att'y.)

Ans. There is the vicinity of four square leagues. The map here presented shows area of nearly four square leagues, and I believe it to be correct.

Ques. Do you know whether George Hanson has left this country; and if so, when he left, and for what country?

Ans. He left in the last steamer, about a week since, for San Francisco, and is not to return, that I know of. I have for some time known him to profess to be making his arrangements to depart for Sonora or Central America. To what place he has gone I know not.

Cross-examined by P. Ord, esq., U. S. att'y.

Ques. You say that Mr. Hanson was your deputy surveyor. Do you mean that he was deputy surveyor of Los Angeles county?

Ans. I do.

91 Ques. In what county is the land claimed in this case situated?

Ans. In what is now called San Bernardino county, and what formerly was a part of Los Angeles county.

Ques. When was the county of San Bernardino established?

Ans. I do not recollect.

HENRY HANCOCK.

Sworn and subscribed to before me this 19th day of January, 1857.

C. SIMS, *U. S. Com'r.*

I, C. Sims, of the city and county of Los Angeles and State of California, commissioner to take affidavits and bail in civil cases pending in the courts of the United States, and depositions, under the acts of Congress approved September 24th, A. D. 1789, February 20th, A. D. 1852, and March 1st, A. D. 1812, by virtue of my office of clerk of the United States court of the southern district of California, and by special appointment by the United States circuit court for the State and circuit of California, do hereby certify that the foregoing deposition of Henry Hancock was taken before me on the 19th day of January, A. D. 1857, according to the agreement and consent of the said attorneys of the parties, at the United States district court-house in the city of Los Angeles and State of California, in behalf of the appellant. That the said Henry Hancock was by me duly sworn, according to law, as a witness in said cause in the caption of this

92 deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence, and after having been by me carefully read to him, and by him corrected in every particular as he desired, was by him signed in my presence.

In witness whereof, I hereunto set my hand and private seal (not having a seal of office) this 19th day of January, A. D. 1857.

C. SIMS,
United States Commissioner.

Filed January 19th, 1857.

C. SIMS, *Cl'k.*

(Here follows map, marked original, page 94.)

95 *Decree.*

In the district court of the United States for the southern district of California.—December term, A. D. 1856.

BERNARDO YORBA, appellant,
vs.
THE UNITED STATES, appellee. } No. 126.—La Sierra.

This cause coming on to be heard on appeal from the final decision of the board of U. S. land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, upon the transcript of the proceedings, papers, and evidence had and taken before the said board, and upon the additional evidence taken in this court; and it appearing that the said transcript and a notice of the intention of the appellant to prosecute the said appeal have been filed with the clerk of this court, and counsel for the respective parties having been heard—

It is ordered, adjudged, and decreed by the court that the decision of the said commissioners be reversed and set aside, and that the title of the said appellant, Bernardo Yorba, to the lands claimed in this case be decreed to be good and valid.

The lands of which confirmation is hereby made are situated in the county of San Bernardino, and are known by the name of La Sierra, being the same lands which were granted to the said Bernardo
96 Yorba on the 15th day of June, A. D. 1846, by Pio Pico, then governor of California, which grant is hereby confirmed to the extent of four square leagues, and no more, and which lands are bounded and described as follows, to wit: situated on the bank of the Santa Ana river, and bounded by the said river and the rancho of Temascal; and for a more particular description of the same reference, is hereunto had to the original grant and map, contained in the transcript, and to the testimony on file in this case.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the S. Dist. of Cal'a.

Filed January 22nd, 1857.

C. SIMS, *Cl'k.*

97 *Appeal.*

United States district court, south'n dis. Cal'a.—Regular December term, 1856.

FEB'Y 24th, A. D. 1857.

BERNARDO YORBA
vs.
THE UNITED STATES. } No. 126.

On motion of P. Ord, U. S. dis't att'y, it is ordered that an appeal be allowed the United States in the following cases, to wit, No. 126.

New appeal.

United States district court, south'n dis't Cal'a.—Regular December term, 1861.

DE EMBER 9th, A. D. 1861.

BERNARDO YORBA, app'ee,
vs.
THE UNITED STATES, appl't. } No. 126.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the United States, (there being no U. S. dis't att'y present,) and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered; which motion being heard, and by the court understood, is granted.

98 *Confirmation of order of appeal.*

United States district court, south'n dis't California.—Regular June term, A. D. 1862.

JUNE 3d, 1862.

BERNARDO YORBA, app'ee,
vs
THE UNITED STATES, appl't. } No. 126.

In this cause, on motion of the U. S. dis't att'y, it is ordered that the previous order of this court, of date the 9th December, A. D. 1861, granting an appeal to the U. States herein, be, and the same is hereby, confirmed.

99 United States district court, southern district of Cal'a.

CLERK'S OFFICE, *Monterey.*

I, John O. Wheeler, clerk of the United States district court for the southern district of California, hereby certify the above and foregoing ninety-eight pages, numbered from 1 to 98, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said court of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in my office, in case No. 126 on the docket of said court, wherein Bernardo Yorba is the claimant against the United States for the place known by the name of La Sierra.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court this the 17th day of June, A. D. 1862, at the city of Monterey, Cal'a.

JOHN O. WHEELER,
Cl'k U. S. Dist. Court, S. Dist. Cal'a.

Filed July 19, 1862.

SUPREME COURT OF THE UNITED STATES.

No. 140.

December Term, 1863.—Appeal from the United States district court for southern district of California.

THE UNITED STATES, appellants,
vs.
BERNARDO YORBA, appellee.

STATEMENT AND ARGUMENT FOR THE UNITED STATES.

The United States object to the decree of confirmation in this case for several reasons:

1st. The grant is proved only by *secondary evidence* of the *handwriting* of the governor, Pio Pico, and his secretary, José Mat as Moreno, *without any legal foundation having been laid for dispensing with the primary evidence.* (See printed Record, p. 3, fol. 7–8.)

2d. It is one of the *latter-day grants* for four leagues of land, made by Pio Pico, June 15, 1846, and therefore void, as against the United States, because made after May 13, 1846.

The argument for the United States on this point has already been presented, in the case of the *United States* vs. *Julian Workman et al.* No. 130 of this term, to which the counsel for the United States beg leave to refer. The decision on this point in that case will necessarily dispose of it in this case also.

3d. But admitting the competency of the governor to make the grant after May 13, 1846, the grant is illegal, because it does not contain the usual conditions, requiring *building* within a year, *cultivation* and *inhabitancy*, as required by the regulations of 1828 and the practice of the government.

The evidence shows that the *grantee never resided on the land* before or after the grant, but merely herded his cattle upon it, as vacant public land. His prior occupancy of it, in that way, can give him no equity to its confirmation on the ground of prior possession. He stands upon his grant alone; and if that is found to be illegal, his claim must be rejected.

By the first section of the regulations of 1828 "the governors of the territories are authorized (in compliance with the law of the general congress of the 18th of August, 1824, and *under the conditions* hereafter specified) to grant vacant lands in their respective territories to such contractors, (empressarios,) families, or *private persons*, whether Mexicans or foreigners, who may ask for them *for the purpose*

of cultivating and inhabiting them." (Halleck's Report, Appendix No. 5, sec. 1.) The governor, therefore, had no authority to grant lands, *except upon conditions* for the purposes of *cultivation* and *inhabitancy*, which he did not do. This view of the law is very strongly presented in the opinion of the land board, to which the attention of the court is invited. (See Printed Record, pp. 26–27.)

4th. The ungenerous and fraudulent conduct of the grantee and claimant towards the widow of his deceased brother, Thomas, as disclosed by the record, although it may be no reason, in itself, for rejecting the claim, yet it furnishes a reason for conceding to him *nothing but his strict legal rights.* (See printed Record, p. 17; fol. 40, p. 18; fol. 41–42, pp. 21–22. Granting him those, and those only, his claim must be rejected.

JOHN A. WILLS,
Special Counsel.
EDWARD BATES,
Attorney General.